To: Jonathan Kreisberg, Regional Director
Bob Redbord, Deputy Regional Director

From: Lisa Fierce

Re: Lerner New York, Inc. d/b/a New York & Company
Case 01-RM-142091

Date: January 26, 2015

I have read the Union's Request for Review of the Region's Decision and Direction of Election in the above matter, which requests review of the Region's decision on numerous grounds.

The Request for Review raises no new issues that warrant reconsideration of the Region's Decision. The Union asserts in its Request for Review that the name of the Union as set forth in the Decision is incorrect in that it is Local 444 rather than Local 173, that the Union brought this error to the attention of the Hearing Officer but was ignored, and that the wrong Local number is at odds with the CBA. I note that there is no record evidence that the Union brought this matter to the attention of the Hearing Officer. To the contrary, the Hearing Officer, at page 18 of the transcript, asked the Union if "New England Joint Board, RWDSU/UFCW, Local 173 is the correct name of the Union, to which the Union's representative responded, "Yes." Notwithstanding the Union's assertion, the title page of CBA in evidence indicates that the Union is, in fact, Local 173, and the recognition clause indicates no local number. I did notice in the Union's post-hearing brief that the Union referred to itself as Local 444 but, in the absence of any explanation from the Union about the discrepancy and in light of the record evidence above, Bob and I decided to go with Local 173.

The Union essentially asserts that the Employer has padded the list with ineligible seasonal employees. In this regard, it asserts that this Employer retains seasonal employees long after Christmas to handle returns, a fact not in evidence, and complains that the Region did not define in the DDE what constitutes an included extra employee versus an excluded seasonal employee. This is a matter that may be determined should there be determinative challenges.

The Union asserts that the Employer never served its post-hearing brief on the Union, which the Employer disputes in its Opposition with FedEx documents.

The Union makes various other arguments that require no comment, i.e., that the petition should have been dismissed when the Employer failed to appear on the first day; that the Union representative, who is not an attorney, felt compelled to take the stand when directed to do so by a representative of the

U.S. government; that a mail ballot will deprive the Union of its last chance to challenge voters; and that the Employer has failed to send the Union lists of new hires as required by the parties' collective bargaining agreement